



Federal Communications Commission
Washington, D.C. 20554

December 8, 2008

In Reply Refer to:
1800B3-RFS

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Re: In the Matter of Amendment of
Section 73.202(b), FM Table of Allotments
FM Broadcast Stations
(Lane and Quinby, South Carolina)

Station WIBZ(FM), Wedgefield, South Carolina
File No. BPH-20080404ACE

Station WWHM(AM), Sumter, South Carolina
File No. BP-20080404ACC

Dear Mr. Smithwick:

This refers to your Petition for Rule Making filed on behalf of Miller Communications, Inc. ("Miller Communications"), licensee of Station WIBZ(FM), Channel 238A, Wedgefield, South Carolina, and AM Station WWHM, Sumter, South Carolina. The Petition proposes the deletion of vacant Channel 237A at Quinby, South Carolina, and the allotment of Channel 238A at Lane, South Carolina, as its first local service.¹ This would accommodate your hybrid application to substitute Channel 237A for Channel 238A at Wedgefield, South Carolina, reallocate Channel 237A to Quinby, South Carolina, and modify the Station WIBZ(FM) license to specify operation on Channel 237A at Quinby.² In order to replace the loss of the sole local service at Wedgefield, you have also filed an application proposing a change in community for AM Station WWHM for Sumter, South Carolina, to Wedgefield.³ For the reasons discussed below, we are returning your Petition for Rule Making and dismissing the associated hybrid applications.⁴

¹ You have also filed the necessary FCC Form 301 application along with the required filing fee for Lane, South Carolina. File No. BNPH-20080404ACR. See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006).

² File No. BPH-20080404ACE.

³ File No. BP-20080404ACC.

⁴ See 47 C.F.R. § 73.3517(c). See also, *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14223 ¶ 17 (2006).

The Commission's longstanding policy is, absent compelling public interest reasons, to refrain from deleting a vacant allotment where there are *bona fide* expressions of interest.⁵ As noted in your Petition for Rule Making, Channel 237A was allotted to Quinby four years ago.⁶ In that FM allotment proceeding, Miller Communications filed comments expressing interest in the allotment. Although this allotment has not yet been opened for auction, you filed a hybrid application to expedite a first local service to Quinby by the aforementioned Station WIBZ change of community application. As such, this filing constitutes a reiteration of Miller Communications' expression of interest in vacant Channel 237A at Quinby. Under these circumstances, we find no reason to delete vacant Channel 237A at Quinby because there is a valid expression of interest in the allotment.

Moreover, we are concerned that the deletion of the Quinby allotment, absent extraordinary circumstances, would be inconsistent with the competitive bidding requirements set forth in Section 309(j) of the Communications Act.⁷ The procedure contemplated in your proposal would also be contrary to a specific representation in the *Report and Order*⁸ that the Channel 237A allotment at Quinby would be ultimately available at auction and, therefore, deletion of this allotment would be unfair to parties wishing to participate in that auction.⁹ Thus, we are returning your Petition for Rule Making and dismissing the Station WIBZ and Station WWHM applications.

Accordingly, the Petition for Rule Making filed by Miller Communications, Inc., is hereby returned and the aforementioned Station WIBZ application (File No. BPH-20080404ACE) and Station WWHM application (File No. BP-20080404ACC) are hereby dismissed.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁵ See *Boswell, Oklahoma and Detroit, Texas*, Report and Order, 22 FCC Rcd 17632 (MB 2007) and *Coosada, Alabama*, Memorandum Opinion and Order, 17 FCC Rcd 21117 (MB 2002) (deleting vacant allotments where there are no *bona fide* expressions of interest).

⁶ See *Florence, Quinby, Greeleyville, and Wedgefield, South Carolina, and Savannah, Georgia*, Report and Order, 19 FCC Rcd 4348 (MB 2004).

⁷ See 47 U.S.C. § 309(j).

⁸ *Id.* note 5.

⁹ Cf. *Grants and Church Rock, New Mexico*, Report and Order, 22 FCC Rcd 9462 (MB 2007), *recon. pending* (denying a counterproposal to downgrade an existing vacant allotment that had not been subject to an auction window and announcing that "[i]n virtually all cases, we will not downgrade a 'drop-in' channel, especially if the vacant channel has not yet been subject to a window for the filing of applications for that channel").